

AMENDED IN SENATE JULY 8, 1997
AMENDED IN ASSEMBLY MAY 23, 1997
AMENDED IN ASSEMBLY APRIL 28, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1526

**Introduced by Assembly Members Escutia, Aroner,
Figueroa, Keeley, Kuehl, Ortiz, Shelley, and Villaraigosa**

February 28, 1997

An act to amend Section 3151 of, and to add Section 3151.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1526, as amended, Escutia. Children.

Existing law authorizes the court to appoint private counsel to represent the interests of a child in a custody or visitation proceeding if the court determines that it would be in the child's best interests. The child's counsel is charged with the representation of the child's interests and has specified duties.

Existing law provides that a child's counsel shall have specified rights when ordered by the court.

This bill would provide that the child's counsel, if requested by the court, would have a duty to prepare a written statement of issues and contentions setting forth the facts that bear on the *best* interests of the child. The statement would be required to set forth a summary of information received by counsel, ~~including~~ a list of the sources of information, the results of the counsel's investigation, ~~the child's wishes when~~

~~deemed appropriate by counsel, and other matters as the court may direct. The bill would require a statement of issues and contentions of the child's counsel to be received in evidence and considered when a judicial determination is made regarding custody or visitation. The bill also would authorize the Judicial Council to specify standards for preparation of the statement of issues and contentions and promulgate a model statement with regard thereto.~~

The bill would delete the provision granting the rights of a child's counsel only when ordered by a court and would also revise, recast, and expand those rights.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3151 of the Family Code is
2 amended to read:

3 3151. (a) The child's counsel appointed under this
4 chapter is charged with the representation of the child's
5 *best* interests. The role of the child's counsel is to gather
6 ~~and present to the court facts that bear on the interests~~
7 ~~of the child, which shall include the child's wishes. The~~
8 ~~counsel's facts that bear on the best interests of the child,~~
9 *and present those facts to the court, including the child's*
10 *wishes when counsel deems it appropriate for*
11 *consideration by the court pursuant to Section 3042. The*
12 *counsel's duties, unless under the circumstances it is*
13 *inappropriate to exercise the duty, include interviewing*
14 *the child, reviewing the court files and all relevant*
15 ~~records about each party~~ *all accessible relevant records*
16 *available to both parties, and making any further*
17 *investigations as the counsel considers necessary to*
18 *ascertain facts relevant to the custody or visitation*
19 *hearings. At the*

20 *(b) At the court's request, counsel shall prepare a*
21 *written statement of issues and contentions setting forth*
22 *the facts that bear on the best interests of the child. The*
23 *statement* ~~statement~~ *shall set forth a summary of*
24 *information received by counsel, including a list of the*

1 sources of information, the results of the counsel's
2 ~~investigation, the wishes of the child, when counsel~~
3 ~~deems appropriate investigation,~~ and such other matters
4 as the court may direct. The statement of issues and
5 contentions shall not contain any communication subject
6 to Section 954 of the Evidence Code. The statement of
7 issues and contentions shall be filed with the court and
8 submitted to the parties or their attorneys of record at
9 least ~~20~~ 10 days before the hearing, unless the court orders
10 otherwise. At the court's request, counsel may orally state
11 the wishes of the child *if that information is not a*
12 *privileged communication subject to Section 954 of the*
13 *Evidence Code, for consideration by the court pursuant*
14 *to Section 3042.* Counsel shall not be called as a witness
15 in the proceeding. Counsel may introduce and examine
16 counsel's own witnesses, present arguments to the court
17 concerning the child's welfare, and participate further in
18 the proceeding to the degree necessary to represent the
19 child adequately. In consultation with representatives of
20 the Family Law Section of the State Bar and the Senate
21 and Assembly Judiciary Committees, the Judicial Council
22 may specify standards for the preparation of the
23 statement of issues and contentions and may promulgate
24 a model statement of issues and contentions, *which shall*
25 *include simple instructions regarding how to subpoena a*
26 *witness, and a blank subpoena form.*

27 ~~(b) Counsel shall have the following rights when~~
28 ~~ordered by the court:~~

29 ~~(1) Reasonable access to the child with adequate~~
30 ~~notice:~~

31 ~~(2) Notice of any proceeding, including a request for~~
32 ~~examinations, affecting the child.~~

33 ~~(3) Access to medical and school records for the child.~~

34 ~~(4) The right to veto any physical or psychological~~
35 ~~examination or evaluation, for purposes of the~~
36 ~~proceeding, which has not been ordered by the court.~~

37 ~~(5) The right to assert on behalf of the child any~~
38 ~~privilege for discovery purposes.~~

39 ~~(6) The right to seek independent psychological or~~
40 ~~physical examination or evaluation of the child for~~

~~purposes of the pending proceeding, upon application to the court.~~

(c) The child's counsel shall have the following rights:

(1) Reasonable access to the child.

(2) Standing to seek affirmative relief on behalf of the child.

(3) Notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child.

(4) The right to take any action that is available to a party to the proceeding, including, but not limited to, the following: filing pleadings, making evidentiary objections, and presenting evidence and being heard in the proceeding, which may include, but shall not be limited to, presenting motions and orders to show cause, and participating in settlement conferences, trials, seeking writs, appeals, and arbitrations.

(5) Access to the child's medical, dental, mental health, and other health care records, school and educational records, and the right to interview school personnel, caretakers, health care providers, mental health professionals, and others who have assessed the child or provided care to the child. The release of this information to counsel shall not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications. Counsel may interview mediators; however, the provisions of Sections 3177 and 3182 shall apply.

(6) The right to reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.

(7) The right to assert or waive any privilege on behalf of the child.

(8) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court.

SEC. 2. Section 3151.5 is added to the Family Code, to read:

1 3151.5. If a child is represented by court appointed
2 counsel, at every hearing in which the court makes a
3 judicial determination regarding custody or visitation the
4 court shall ~~receive in evidence and~~ consider any
5 statement of issues and contentions of the child's counsel.
6 Any party may subpoena as a witness any person listed in
7 the statement of issues and contentions as having
8 provided information to the attorney, but the attorney
9 shall not be called as a witness.

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